

**PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
THURSDAY, OCTOBER 18, 2007 – 10:00 AM
CITY HALL, 8TH FLOOR
COMMISSION CONFERENCE ROOM**

BOARD MEMBERS PRESENT

Peter Partington, City Engineer
Mark Darmanin, Utilities Distribution, and Collections Manager
Tony Irvine, City Surveyor
Tom Terrell, Public Works Maintenance Manager
Anthony Fajardo, Planner II
Carol Ingold Mordas, Parks Supervisor
Bob Dunckel, Assistant City Attorney III
Michael Maloney, Code Enforcement Manager

STAFF AND GUESTS

Victor Volpi, Senior Real Estate Officer
Robert Clabaugh, Time Warner Telecom
Gene Mohen, Time Warner Telecom
Diana Alarcon, City Parking Services
Jose DiCienzo, Public Works
Miguel Arroyo, Public Works
Elizabeth Rivera, Recording Clerk, Prototype Inc.

CALL TO ORDER

Mr. Partington called the meeting to order at 10:07 a.m., and stated this was a Committee with the responsibility of advising the City Manager and City Commission on matters connected with City property and public right-of-way.

Following roll call, it was determined that a quorum was present.

ITEM ONE: **APPROVAL OF SEPTEMBER 20, 2007 MINUTES**

Motion made by Mr. Darmanin, seconded by Mr. Terrell to approve the minutes from the September 20, 2007 meeting. In a voice vote, the motion passed unanimously.

ITEM TWO: **VACATION OF ALLEY/EASTSIDE TOY STORAGE,
LLC ALLEY BETWEEN SW 14TH COURT AND SW 15TH
STREET AND SW 4TH AVENUE AND THE FEC
RAILROAD**

ADDRESS OR

GENERAL LOCATION: between SW 14 Court and SW 15 Street, and SW 4 Avenue and the REC Railroad

EXPLANATION: This item was deferred to the November meeting.

ITEM THREE: **VACATION OF ALLEY/EASTSIDE TOY STORAGE, LLC ALLEY BETWEEN SW 16TH COURT AND SW 15TH STREET AND SW 4TH AVENUE AND THE FEC RAILROAD**

ADDRESS OR
GENERAL LOCATION: between SW 16 Court and SW 15 Street, and SW 4 Avenue and the FEC Railroad

EXPLANATION: This item was deferred to the November meeting.

ITEM FOUR: **REGISTRATION AS A UTILITY (TELECOMMUNICATIONS) OWNER/OPERATOR**

ADDRESS OR
GENERAL LOCATION: N/A

EXPLANATION: Time Warner Telecom of Florida requested a positive recommendation to register with the City of Fort Lauderdale as a utility owner/operator in all municipal rights-of-ways, in accordance with Chapter 25 of our City Code, Sections 200-214.

APPEARANCE: Robert Clabauh and Adrienne Leonard, Time Warner Telecom of Florida, LP

Mr. Partington informed the Committee that if an applicant meets the criteria, the City Engineer would have no choice but to approve, and it appeared to be unnecessary for the Property and Right-Of-Way Committee to hear the applications.

Mr. Dunckel agreed, and explained that a year ago an application had come to the Committee, and it was felt that, because of the Chapter 25 ordinance calling for a registration, they should come before the Committee for permits. Mr. Dunckel remarked that in the future, these applications should be handled internally within Engineering. Mr. Dunckel advised that in this particular case, it did not appear that Time Warner had provided all necessary information under the ordinance, and that the Committee should take that under advisement.

Mr. Terrell clarified that the previous application to come before the Committee was a bit different, in that part of the need was to attach equipment to City equipment and poles.

Mr. Dunckel stated that the statute allowed for agreements, but that the City could not charge money for doing that.

Mr. Volpi asked for clarification on the Committee's ability to charge fees. Mr. Dunckel explained that no fees could be collected for Property and Right-of-Way; the fees should be waived and any checks received should be returned. Mr. Dunckel confirmed that the State does receive money, which then comes back to the City. He explained that there used to be a telecommunications tax, but now monies are paid to the State, and then the State distributes it to the various municipalities and counties.

Mr. Partington stated that, in the future, the City Engineer will check that all criteria have been met. Once registered, each and every installation will be the subject of an engineering permit.

Mr. Partington asked Mr. Clabaugh, a representative of Time Warner, what kind of equipment would be installed. Mr. Clabaugh explained that all of the equipment to be installed would be located in Time Warner's central office or in a hub location, and nothing would be installed in the road or in the right-of-way.

Mr. Partington stated that Time Warner would probably not need any engineering permits since nothing would be in the right-of-way. Mr. Clabaugh informed the Committee that they would need permits for the fiber and explained that they would be building laterals from fiber cable into single- and multi-tenant buildings.

Mr. Dunckel asked what services would be provided by the cables. Mr. Clabaugh answered that the cables would provide voice data, emergency services, and internet, but not cable television. None of the services provided were regulated by the PSC. Mr. Partington restated that for every one of those installations there would need to be an engineering permit application.

Mr. Dunckel commented that the City is working with AT&T with their Light Speed project and above grade facilities. He asked Mr. Clabaugh if there would be any above grade facilities with Time Warner. Mr. Clabaugh said that if there were existing poles available, sometimes Time Warner could have a pole agreement to attach to those existing poles. Mr. Clabaugh stated that there would be no large cabinets in the right-of-way.

Mr. Partington asked if a contractor would be pulling the permit on the underground fiber installation, and if the contractor would be licensed. Mr. Clabaugh explained that the permits would be pulled under the name of Time Warner, and then the work would be subcontracted. He assured the Committee that those subcontractors would meet all the City requirements, and all of the insurance requirements. Mr. Partington expressed concern with the chain of command in dealing with subcontractors. Mr. Clabaugh affirmed that Time Warner is responsible to make sure the subcontractors provide adequate restoration to road cuts at the completion of the project.

Mr. Partington requested information from the Committee concerning the "hold" the City would have over Time Warner if there were issues with subcontractors. Mr. Dunckel offered to double check the ordinance to see whether the permits should be under the name of Time Warner or the subcontractor. Mr. Clabaugh suggested that Time Warner be held responsible since contractors come and go. He stated that if the problems were not resolved, the City could refuse other permits being issued until the problems are fixed.

Mr. Dunckel confessed that he had not checked on remedies available to the City, but he would look into it. Mr. Partington stated that there was more and more concern over the inability to control what goes on with excavations and restoration, and that there had been a number of complaints. Mr. Mohen, a representative of Time Warner, pointed out that it would be easier to resolve those complaints if the City was only dealing with one entity instead of with individual subcontractors.

Mr. Irvine quoted from a City engineering website that "a licensed engineering contractor shall submit a list of all subcontractors for approval to the City of Fort Lauderdale. The licensed engineering contractor shall submit a copy of his or her certification." He clarified that there does have to be a licensed engineering contractor involved in the engineering permit process. Mr. Dunckel stated that they needed to reference that with the Right-of-Way Administration Ordinance numbers.

Mr. Partington stated that he would get together with Dennis and Bob to figure out if the wording in the web page needed to be amended, and that he would look into the insurance issue regarding Time Warner's current permit application.

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| <u>ITEM FIVE:</u> | <u>PALMDALE</u> | <u>PUMP</u> | <u>STATION</u> | <u>PROPERTY</u> |
| | <u>DISPOSITION</u> | | | |

ADDRESS OR

GENERAL LOCATION: NE 6 Avenue, south of North East High School (700 NE 56 Street), Oakland Park

EXPLANATION: Mark Darmanin, Utilities Distribution and Collections Manager, requested discussion on the status of the disposition of the property known as the Palmdale Pump Station.

APPEARANCE: Mr. Miguel Arroyo, Public Works

Mr. Volpi reminded the Committee that on February 16, 2006, they had recommended that the station be returned. Mr. Volpi sent all information to the attorney's office, and on September 20, 2007, Mr. Dunckel was given the assignment.

Mr. Dunckel explained that there was an easement of 4,400 square feet on School Board property for sanitary sewer facilities and pumping stations. The issue was that the Committee wanted to get rid of that easement, and who would bear responsibility for getting rid of the building. Mr. Dunckel stated that, according to an email he received, that the School Board is willing to keep the existing building in the easement area, and that the City would remove pumps, pipes, and other facilities. Mr. Dunckel stated that an easement for water sampling could not be retained because that was not in the bundle of easement rights received from the School Board. He noted that the details needed to be worked out with the School Board, then the agreements can be drafted and put into effect.

Mr. Darmanin clarified that the only thing the Committee had attempted to get rid of was the building, not the entire easement. Mr. Dunckel disagreed, and stated that, according to his notes, they were discussing getting rid of the property. Mr. Terrell agreed with Mr. Dunckel that the discussion was to get rid of the whole piece of property.

Mr. Arroyo from the Public Works Department thought that a portion was being retained for a monitoring well. Mr. Dunckel restated that there was no agreement regarding easement rights for a monitoring well. Mr. Terrell asked about the possibility of moving the existing monitoring well ten feet into the new easement. Mr. Arroyo will check on that as a possibility.

Mr. Dunckel explained that there needed to be some type of written understanding between the City and the School Board, and named Nick Messina as a contact person. Mr. Dunckel asked that an agreement be discussed with Mr. Messina who would be responsible for the removal of the building and pipes.

ITEM SIX: **DIXIE SLUDGE PIT DISPOSITION**

ADDRESS OR

GENERAL LOCATION: 1400 SW 46 Avenue, Unincorporated

EXPLANATION: Mark Darmanin, Utilities Distribution and Collections Manager, requested discussion of the status on the distribution of the property known as the Dixie Sludge Pit located on Davie Boulevard Extension.

APPEARANCE: Miguel Arroyo and Jose DiCienzo, Public Works

Mr. Volpi explained that there was an appraisal on October 3, 2006 for \$2,660,000, and at a previous Property and Right-of-Way meeting the Committee had recommended approval to dispose of the property. Mr. Volpi contacted Plantation on July 20, 2007, and has not received a response on their first right of refusal. Mr. Volpi explained that if Plantation was not interested in the property the City would then advertise and bid the property out.

Mr. Dunckel read from page five of the September 15, 2005 meeting that ten to twelve feet of the compacted sludge would need to be removed and replaced with clean fill in order to build on it. Mr. Dunckel stated that anyone buying on the property would want clean environmental so that they could build. Mr. Dunckel suspected that would be a significant dollar amount impacting on the value, and felt that more due diligence was needed. Mr. Dunckel questioned whether the current suppressed market made it a wise decision to try to sell the property at this time.

Mr. Irvine asked if the trees had been dealt with. Mr. Darmanin confirmed that the trees on the perimeter had been trimmed and removed, the internal trees had been taken from the fall area, but there was still a lot to be done. Mr. Terrell asked about the status of people camping in the area. Mr. DiCienzo, a representative from the Public Works Department, informed that there continued to be maintenance issues from trespassers.

Mr. Partington asked if Plantation had the right for first refusal, or if this was just a courtesy action being extended. Mr. Volpi confirmed that it was just a courtesy

issue. Mr. Partington stated the Committee could assume that Plantation was not terribly interested since there had been no response. Mr. Darmanin stated the Committee was looking to move the project forward and have a decision made.

Mr. Dunckel submitted that the ten to twelve foot area to be cleaned would be a significant amount, and that the Committee might want to have EE&G provide a site assessment on the probable costs of remediation. Mr. Arroyo stated that this issue had come up in the past, and he had been under the impression that an appraisal would be performed. Mr. Volpi suggested that the appraisal be done by an engineering firm rather than an appraiser.

Mr. Arroyo stated that \$2,000,000 to \$3,000,000 had been spent at another site in 2003, and that the same job would cost approximately three times that amount today. Mr. Irvine stated that this is a millstone around the City's neck that will cost more and more as time goes by. Mr. Dunckel suggested that the cost at least be determined, without any agreement as to who would be responsible for the costs.

Mr. Terrell defined the utilities department as the property owner, and asked if the decision to proceed didn't belong solely to the utility department. Mr. Darmanin disagreed, and thought the Property and Right-of-Way Committee needed to make a recommendation to go to the City Commission. Mr. Arroyo stated that he was under the impression the sludge pit disposition had already been approved by the Committee in 2006. Mr. Dunckel explained that if an approval had been given, a resolution would have been adopted.

Mr. Arroyo stated that there were no environmental problems with the sludge pit. Mr. Dunckel asked why clean fill needed to be added in order to build on it. Mr. Arroyo stated that there are ways to build without removing the sludge. Mr. Darmanin explained that if someone wanted the pit as a vacant piece of land, no remediation would be necessary.

Mr. Irvine shared an example of a lime sludge pit on Commercial Boulevard being used as a parking lot. None of that pit was desludged, the parking lot had just been stabilized, and buildings were built on that parking lot. Mr. Arroyo confirmed that the land could be developed into a profitable commodity. He also noted that an easement would be necessary for raw water lines on the west end, running north and south.

Mr. Partington asked for clarification on an appraisal to desludge if the desludging is not necessary to build. He suggested the Committee seek

approval from the City Commission to ask for bids for the water lines on the property. Mr. Dunckel stated that, from a realtor's perspective, this is a bad time to try to sell the property. Mr. Terrell asked if the property should be listed for the full \$2,000,000, or reduce the price due to the sludge. Mr. Volpi stated that the City would have to disclose the issue to the public. The property could be sold as-is, but would have to disclose the issues.

Mr. Irvine suggested that the property be advertised as an old sludge pit, and disclose any appraisals received. Mr. Volpi stated that the appraisal is for \$2.6 million, with no demucking, the zoning to be highest and best use. Mr. Dunckel pointed out that most appraisals assume that there are no environmental problems. Mr. Volpi offered to have the appraiser hire a contractor to advise whether or not the environmental issues degraded the value of the property.

Mr. Arroyos advised that the property had been cleaned, and that there are Phase I and Phase II assessments by EE&G confirming that there are no environmental issues. Mr. Volpi recommended that the property be put on the market as-is with a minimum bid set, and if potential buyers are inclined to do the demucking, they will place their bids accordingly.

Mr. Partington stated that, due to the market situation, and the likelihood that the appraised value would not be achieved, more work needed to be done on the appraisal. Mr. Darmanin asked about the cost of putting the land out to bid at this point. Mr. Irvine stated that the property is at ground level, with appropriate drainage, the soil conditions appear adequate for development, and that no more work needs to be done on the appraisal. Mr. Terrell suggested that the soil boring company could go out and provide an opinion.

Mr. DiCienzo reminded the Committee that there was also a Broward County school to the east of the property, and asked if the same deal would have to be offered to the school. A Committee member informed him that they would not have to make the same offer.

Mr. Partington asked about getting an appraisal reflecting no environmental issues, but relating to the ability to develop it as-is. Mr. Irvine suggested getting a technical report to provide to the appraiser, and that the appraiser provide an updated opinion. Mr. Volpi assured that Committee that the appraiser would provide that update without requiring an additional fee.

Mr. Irvine pointed out that the cost of development would vary based on what the bidder wanted to build, and that the Committee could not quantify building costs.

Motion made by Mr. Darmanin, seconded by Mr. Irvine, to surplus the property, contingent upon a survey of the property, including the raw water line and the dedicated easement, a geotechnical report with the appraisal documentation, that the appraiser use that geotechnical report to adjust his dollar figure at no cost to the Committee.

Mr. Irvine suggested that the motion be amended to say they would try to get the appraisal done at no cost, so the motion wouldn't be stymied if the appraiser asked for a fee. Mr. Dunckel advised that the adjusted easement information should also be a part of the amended motion.

Motion made by Mr. Darmanin, seconded by Mr. Irvine, to surplus the property, contingent upon a survey of the property, including the new easement information, raw water line and the dedicated easement, a geotechnical report with the appraisal documentation, that the appraiser use that geotechnical report to adjust his dollar figure, and to try to get the appraisal at no cost to the Committee. In a voice vote, the motion passed unanimously.

There being no further business to come before the Committee the meeting adjourned at 11:08 a.m.